

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ODIN TELEPHONE EXCHANGE, INC.)

Petition For Suspension Or Modification of)
Section 251(b)(2) requirements of the Federal)
Telecommunications Act pursuant to Section)
251(f)(2) of said Act; for entry of Interim)
Order; and for other necessary relief.)

Docket No. 04-0239

OFFICIAL FILE

ILL. C. C. DOCKET NO. 04-0239

Odin

Exhibit No. 1

Witness

Date *4/8/04* Reporter *ced*

DIRECT TESTIMONY

OF

JASON P. HENDRICKS

FOR

ODIN TELEPHONE EXCHANGE, INC.

April 20, 2004

47 Q. Please state your name and business address.

48 A. My name is Jason P. Hendricks, and my business address is 2270 LaMontana
49 Way, Colorado Springs, CO 80919.

50

51 Q. By whom are you employed and in what capacity?

52 A. I am employed by GVNW Consulting, Inc. ("GVNW") as a Senior Consultant.
53 GVNW provides consulting services on a variety of issues to independent
54 telecommunications companies and their affiliates.

55

56 Q. Please describe your educational background and business experience.

57 A. I graduated from Penn State with a Bachelor of Science degree in Economics
58 from the University of Wyoming with a Master of Science degree in Economics
59 (and a specialization in Regulatory Economics), and from the University of
60 Illinois, Springfield with a Master of Arts degree in Political Studies.

61

62 As an employee of GVNW, I have assisted rural LECs in various capacities on
63 issues such as access charges, universal service, LNP and tariff filings. I have
64 also assisted rural LECs in cost studies, business development and regulatory
65 advocacy. I have represented GVNW's rural LEC clients in many ICC
66 workshops, meetings and proceedings.

67

68 Prior to my employment at GVNW, I was employed by the ICC as an Economic
69 Analyst in the Telecommunications Division. As part of my duties at the ICC, I

70 provided testimony in numerous proceedings implementing the
71 Telecommunications Act of 1996 ("TA 96"). In addition, I reviewed tariff filings
72 for compliance with state and federal law and led industry workshops to examine
73 every Illinois Administrative Code Part for consistency with the goals of TA 96. I
74 also was involved in the initial LNP workshops held in Illinois in 1997, upon
75 which many LNP standards were subsequently based.

76
77 Q. On whose behalf are you providing testimony in this proceeding?

78 A. I am providing testimony on behalf of and in support of the Petition filed by
79 Odin Telephone Exchange, Inc. ("Odin"). Our firm has provided consulting
80 services to Odin in connection with the subject matter of this proceeding and I
81 performed the incremental cost analysis regarding the costs to Odin of
82 providing wireline-to-wireless local number portability based upon information I
83 have received from the company and others, which I will subsequently be
84 introducing and discussing in my testimony.

85
86 Q. For the record and to provide background, did an Order of the Federal
87 Communications Commission entered in November, 2003 lead to the filing of the
88 Petition in this docket requesting a suspension or modification of the Section
89 251(b)(2) requirements related to the provision of wireline-to-wireless number
90 portability pursuant to Section 251(f)(2) of the Federal Telecommunications Act?

91 A. Yes, that is correct. The FCC on November 10, 2003 in response to a CTIA
92 Petition For Declaratory Rulings On Wireline-Wireless Porting Issues released a

Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in
CC Docket No. 95-116. As it pertains to the Top 100 MSAs in the country, the
November 10, 2003 FCC Order concluded, in part, as follows at paragraph 22:

“We conclude that, as of November 24, 2003, LECs must port numbers to
wireless carriers where the requesting wireless carrier’s “coverage area” overlaps
the geographic location of the rate center in which the customer’s wireline
number is provisioned, provided that the porting-in carrier maintains the numbers
original rate center designation following the port.”

For companies whose service territories are not located within a Top 100 MSA,
the date for a provision of wireline-to-wireless local number portability was
established as the later of six months after receipt of a bona fide request or May
24, 2004. The FCC, in a subsequent Order, extended the November 24, 2003 date
to the later of six months after receipt of a bona fide request or May 24, 2004 for
rural telephone companies in the Top 100 MSAs, as well.

Q. Is Odin’s service territory located within a Top 100 MSA?

A. No, it is not.

Q. For the record, please provide a description of Odin and its operations.

A. Odin is a small telephone company and a facilities-based incumbent local
exchange carrier providing local exchange telecommunications services as
defined in Section 13-204 of The Illinois Public Utilities Act (“Act”) subject to

116 the jurisdiction of this Commission. Odin provides service in its Odin, Shobonier,
117 Oblong and Martinsville exchanges. As of December 31, 2003, Odin provided
118 service to approximately 3,791 access lines. Odin's service area is rural and
119 sparsely populated.

120

121 Q. Is Odin a "rural telephone company" within the meaning of Section 153(47) of
122 the Federal Act and Section 51.5 of the Rules of the Federal Communications
123 Commission?

124 A. While I am not an attorney, it is my understanding that Odin is a "rural telephone
125 company" within the meaning of the Federal Act and the FCC's Rules.

126

127 Q. As a rural telephone company, does Odin possess a "rural exemption" of the
128 251(c) obligations pursuant to Section 251(f)(1)(A) of the Federal Act?

129 A. While once again I am not an attorney, it is my understanding that Odin
130 possesses a "rural exemption" pursuant to the terms of the Federal Act.

131

132 Q. Has Odin received a Section 251(c) *bona fide* request for interconnection, services
133 or network elements from any telecommunications carrier?

134 A. No, it has not.

135

136 Q. Has any telecommunications carrier requested this Commission to terminate
137 Odin's rural exemption pursuant to the provisions of Section 251(f)(1)(B) of the
138 Federal Act?

139 A. No, they have not.

140

141 Q. Has any wireline telecommunications carrier requested Odin to provide number
142 portability?

143 A. No, they have not.

144

145 Q. Has Odin received correspondence or inquiries from wireless carriers, which
146 taken into consideration the content of the November 10, 2003 FCC Order, could
147 be interpreted to be requests for wireline-to-wireless local number portability?

148 A. Yes, Odin has received those kinds of documents from Verizon Wireless and
149 Sprint PCS. Again while I am not an attorney, I want to note for the record that
150 the FCC's November 10, 2003 Order did not amend its pre-existing rules related
151 to number portability.

152

153 Q. Are you attaching to your testimony the correspondence and other documents that
154 Odin received from wireless carriers?

155 A. Yes, I am. The correspondence and other documents that Odin received from
156 Verizon Wireless and Sprint PCS are appended to my testimony as Odin
157 Attachment 2. (Response to Staff Data Request 1.12)

158

159 The above-referenced Staff Data Request asks that Odin detail "all facts" that
160 suggest correspondence and other documents contained in Attachment 2 "could
161 constitute" requests for wireline-to-wireless local number portability. The facts

162 are the correspondence and attached documents that constitute Odin Attachment
163 2, which on their face appear to be "requests for wireline-to-wireless local number
164 portability. (Further Response to Staff Data Request 1.12)

165

166 Q. Has Odin filed with the FCC a formal challenge against the correspondence and
167 other documents contained in Attachment 2 as insufficient to constitute bona fide
168 requests for wireline-to-wireless local number portability?

169 A. No. (Response to Staff Data Request 1.13)

170

171 Q. Why has Odin not filed such a challenge or challenges?

172 A. Assuming that "challenge" means that Odin would make some filing with the
173 FCC seeking a ruling that the correspondence and other documents contained
174 within Attachment 2 do not constitute a bona fide request for wireline-to-wireless
175 local number portability, Odin has been advised by counsel that such a filing
176 would not be proper or prudent at this time. (Further Response to Staff Data
177 Request 1.13)

178

179 Q. Does Verizon Wireless or Sprint PCS have a point of interconnection in Odin's
180 serving territory or numbering resources from Adams at the time this
181 testimony is being filed?

182 A. No, they do not.

183

184 Q. Does any wireless carrier have a point of interconnection within Odin's serving
185 territory or numbering resources from Odin at the time this testimony is being
186 filed?

187 A. No.

188

189 Q. As a practical matter, what is the consequence of a wireless carrier not having a
190 point of interconnection or numbering resources within the serving territory or
191 exchange from which a number is ported?

192 A. It is my understanding that as a practical matter it means that a call to such a
193 ported number from another Odin customer would have to be routed to a location
194 or a point of interconnection outside of Odin's serving territory where the wireless
195 carrier does have a point of interconnection. The routing of a call to a location
196 outside of Odin's local calling area would normally lead to such a call being rated
197 as an interexchange call or toll call.

198

199 Q. Is Odin requesting that this Commission make a determination in this docket
200 as to whether the correspondence and documents received from Verizon Wireless
201 and/or Sprint PCS, or any similar documents that may subsequently be received
202 from other wireless carriers, constitute a bona fide or specific request for wireline-
203 to-wireless number portability in accordance with the FCC's rules?

204 A. No, we are not. Odin is requesting that in the final Order entered in this docket
205 that the Commission grant Odin a suspension or modification of the
206 wireline-to-wireless local number portability requirements of Section 251(b)(2)

207 pursuant to Section 251(f)(2) of the Federal Act to November 24, 2006. In our
208 opinion, the focus of the proceeding should be on that request for relief.

209

210 Q. Are you familiar with the wireline-to-wireless local number portability suspension
211 dockets initiated earlier by the five Illinois small companies who have a presence
212 in the St. Louis MSA, which is a Top 100 MSA?

213 A. Yes, I am, as is the management personnel at Odin.

214

215 Q. For the record, would you please indicate the five companies and dockets that
216 were involved in those earlier wireline-to-wireless local number portability
217 suspension requests.

218 A. The Petition of Madison Telephone Company was heard in Docket No. 03-0730.
219 The Petition of Egyptian Telephone Cooperative Association was heard in Docket
220 No. 03-0726. The Petition of Harrisonville Telephone Company was heard in
221 Docket No. 03-0731. The Petition of Alhambra-Grantfork Telephone Company
222 was heard in Docket No. 03-0732, and the Petition of Home Telephone Company
223 was heard in Docket No. 03-0733.

224

225 In addition to having discussions with representatives and counsel for some of
226 those companies, I reviewed the Direct and Rebuttal Testimony, including the
227 cost analysis submitted into the record, on behalf of Madison Telephone
228 Company in Docket No. 03-0730. I also reviewed the testimony submitted by the
229 Staff in that docket, and in particular, the testimony of Staff witnesses Jeffrey

Hoagg concerning policy issues and the Staff's ultimate recommendations in that docket and the testimony of Robert Koch commenting on and responding to the incremental cost analysis submitted by Madison in that docket.

Finally, I reviewed the transcript from the hearing held on February 23, 2004 in the Madison docket, including the supplemental oral testimony submitted by Michael Guffy on behalf of Madison and by Jeffrey Hoagg on behalf of the Staff concerning Madison's and the Staff's final recommendations to the Commission with regard to the requested suspension. I also reviewed the questions posed by the Administrative Law Judge to Mr. Guffy and to Mr. Hoagg and their respective responses. It is my understanding that the record in the other four dockets are quite similar and the ultimate recommendations of the respective companies and the Staff with regard to the duration of a suspension is the same in each of those other dockets.

Q. Have you also had discussions with representatives of other small companies who have more recently filed Petitions with the Commission requesting similar relief to what is being sought by Odin with regard to wireline-to-wireless number portability?

A. Yes, I have. In light of Odin's and all of the other small companies' lack of experience in providing local number portability and our limited resources, we have relied not only on the efforts of the five companies who had initially filed, but the experience of other companies and their consultants and advisors in

pooling information and making certain that we are all correctly identifying the activities and costs involved in the provision of wireline-to-wireless local number portability. To the extent we have made estimates or assumptions concerning certain of the costs, we have, in part, used the information available from the other dockets, taking into account the Staff's response as well as Odin's specific information in developing the appropriate estimates or assumptions. We have also relied upon information provided to us and other carriers who have previously or are now seeking suspensions and from vendors and Associations with expertise in the area and from the National Exchange Carriers Association (NECA).

Q. With regard to Odin's request for a suspension or modification of any obligation it may have to provide wireline-to-wireless number portability, please describe Odin's basic position.

A. It is Odin's position that a small company, such as Odin, should not be required to provide wireline-to-wireless local number portability within its serving area until such time as operational and administrative problems associated with its provision have been worked out on a more global basis by the larger incumbent local exchange carriers, such as SBC, and the large wireless carriers requesting number portability. Companies such as SBC have been providing some type of local number portability for a number of years. Those companies have already made the incremental investments to provide local number portability and have trained employees and have had ongoing business experience in the provision of at least

some type of local number portability. Odin has not had the obligation to provide any type of number portability, and therefore, has not incurred the incremental costs nor does it have the background and experience in the provision of any type of local number portability. In Odin's view, from a policy and industry perspective, this would appear to be similar to the situation when customers were initially allowed to presubscribe to interexchange carriers. Presubscription was initially implemented by the large carriers, such as the RBOCs; and the operational, administrative and other difficulties associated with presubscription were worked out over a period of time between those large incumbent local exchange carriers and the large interexchange carriers, such as AT&T, MCI and Sprint. In connection with determinations related to the Primary Toll Carrier Plan in Illinois, this Commission provided a different and subsequent timetable of presubscription for small companies, such as Odin, after experience had been gained from the larger companies.

Second, it is Odin's position that it should in no event be required to provide wireline-to-wireless local number portability until such time as regulatory decisions have been made and mechanisms put in place that will allow Odin to recover all of its costs, not just some of its costs, associated with the provision of wireline-to-wireless local number portability. The FCC's Orders to date, including the November, 2003 Order, fail to address how the cost of transporting calls to wireless points of interconnection outside of the incumbent local exchange carriers' serving area and associated transiting or tandem switching

costs, will be recovered. While it is Odin's belief that those costs should not be borne by Odin or its customers, no regulatory decision by the FCC or this Commission has been made as to how those costs will be recovered and mechanisms put in place to allow for such recovery.

Third, the evidence I will be submitting will demonstrate that the additional or marginal costs to Odin of providing wireline-to-wireless number portability are significant for a company of Odin's size and would be unduly economically burdensome upon the company and its end user customers. The evidence will show that although Odin does not believe all of the incremental costs of providing wireline-to-wireless local number portability should be borne by its customers, that lacking regulatory determinations that the costs may be recovered in some other manner, recovery of those costs from Odin's end user customers would have a significant adverse economic impact upon them. The granting of a suspension or modification is not only consistent with the statutory criteria of Section 251(f)(2)(A) but would also be consistent with the public interest, convenience and necessity.

Finally and related to the above, it is Odin's position that a small company, such as Odin, should not be required to provide wireline-to-wireless local number portability until there is a demonstrated desire or demand for that service from our customers. Staff witness Hoagg, in the dockets regarding Madison's request and the requests of the other four companies, submitted testimony that

322 indicated there were extremely low "take rates" by both Verizon subscribers
323 (.02% in January, 2004) and by SBC customers throughout its Midwest Region of
324 .017%. Odin sees no evidence that there is any significant demand for
325 wireline-to-wireless number portability within its serving area. Up until this time,
326 Odin has not received any requests from customers that want to port their
327 wireline number to their wireless service. Odin would be willing to provide the
328 service at such time as there is a demonstrated demand from our customers for the
329 service together with a willingness by all of Odin's customers to pay for the
330 service. However, it is Odin's position that Odin should not be required to
331 provide the service until such a demand is demonstrated, since the adverse
332 economic impact on Odin's customers to recover from them the incremental
333 costs associated with the provision of the service would be even more contrary to
334 the public interest if there was little or no demand for the service.

335
336 Q. Identify and describe in detail Odin's efforts to determine its customers'
337 demand for wireline-to-wireless local number portability.

338 A. Odin has determined from its service representatives that they have received
339 no inquiries from customers asking about wireline-to-wireless number portability.
340 *Odin is a very small company and has not undertaken any official inquiry or*
341 *survey from its customers at this time. However, as a small company, Odin*
342 *is very familiar with its customer base and sees no evidence that there is any*
343 *reason to believe that there will be any significant demand for wireline-to-*

344 wireless number portability within its serving area. (Response to Staff Data
345 Request 1.14)

346

347 Q. Please provide a general description of what Odin would be required to do
348 and the types of costs that would be incurred by Odin to provide wireline-to-
349 wireless number portability in its serving area.

350 A. Odin has a Nortel host switch located in its Odin exchange, with Nortel SSO
351 switches located in its Shobonier and Oblong exchanges. Currently, the switch in
352 Odin's Martinsville exchange is a Nortel remote off the Illinois Consolidated
353 Mattoon switch. Odin recently purchased the Oblong and Martinsville exchanges
354 from Illinois Consolidated and has not yet converted the Martinsville switch to a
355 Nortel SSO off of the Odin exchange switch. That conversion is scheduled to
356 occur later this year. While the current generic software contained in Odin's
357 switches will accommodate number portability, that capacity or feature has not
358 been "loaded or activated". As I will discuss subsequently in connection with the
359 costs involved, Odin would need Nortel personnel to load and activate that
360 capability in all four switches. Nortel personnel would also need to make
361 translations in the switches and perform testing and verification.

362

363 Odin would need to file an application with NPAC and sign agreements to access
364 the NPAC Service Management System (SMS). Odin would need to decide
365 whether to enter into an agreement with a vendor to provide local number
366 portability Service Order Administration (SOA) services. There will be costs

367 associated with accessing the SMS and costs associated with the SOA process.
368 Since calls to ported numbers would need to have a LNP data base dip in
369 connection with the provision of number portability, Odin would need to enter
370 into an agreement with an LNP database provider which would include the query
371 charges. There would need to be additional coordination and testing, including
372 testing with any wireless carrier desiring wireline-to-wireless local number
373 portability. The various agreements that Odin would need to enter into would
374 need to be dealt with and reviewed by legal counsel prior to the implementation of
375 local number portability.

376
377 Query costs will be incurred on a going-forward basis when a Odin customer
378 calls a number that has been ported. Administrative, order processing, customer
379 service, regulatory and legal costs will be incurred by Odin in connection with
380 any requirement to implement and provide wireline-to-wireless local number
381 portability. In addition, appropriate training of technical personnel would need to
382 occur as well as appropriate training of other Odin personnel.

383
384 Customer education efforts will have to be undertaken, not only in connection
385 with any initial offering of wireline-to-wireless number portability, but on an
386 ongoing basis, as well. There will be ongoing operational and technical costs
387 involved in the provision of local number portability associated with potential
388 technical trouble resolution.

390 In addition, there are the transport and transiting costs, which I will be discussing
391 subsequently in my testimony. The above is a very general and broad description
392 of the types of activities and costs that Odin would incur.

393
394 Q. If Odin were to be required to implement wireline-to-wireless local number
395 portability, what is your understanding as to how an Odin landline customer call
396 to an Odin number that had been ported to a wireless carrier would be delivered to
397 the wireless carrier?

398 A. The FCC's Orders and Rules as they now stand do not require a wireless carrier to
399 have a point of presence within Odin's area nor do they require the wireless
400 carrier to establish direct trunks to Odin for the purpose of delivering calls. Since
401 no wireless carrier has a point of interconnection or numbering resources in
402 Odin's serving area, Odin believes, based upon the FCC's current requirements,
403 that all calls from Odin wireline customers to a Odin customer, who had ported
404 his/her number to a wireless carrier, would have to be transported to the tandem
405 that Odin's office subtends for delivery to the wireless carrier. Odin's Odin and
406 Shobonier exchanges subtend the SBC tandem in Centralia, Illinois, and
407 therefore, calls to numbers ported in those exchanges to wireless carriers would
408 have to be delivered to the SBC tandem in Centralia for delivery to the wireless
409 carrier. Odin's Oblong exchange subtends the Verizon tandem in Olney, Illinois,
410 and therefore, calls to numbers ported from the Oblong exchange to a wireless
411 carrier would have to be delivered to the Verizon tandem in Olney for delivery to
412 the wireless carrier. Odin's Martinsville exchange subtends the Illinois

Consolidated tandem in Mattoon, Illinois, and therefore, calls to numbers ported from the Martinsville exchange to wireless carriers would have to be delivered to the Illinois Consolidated tandem in Mattoon for delivery to the wireless carrier.

Based upon our understanding and based upon the information that small company representatives have obtained regarding SBC, Verizon and Illinois Consolidated, it is my belief that initially common transport facilities provided by both Odin and SBC, Verizon or Illinois Consolidated (depending upon the tandem involved) would be used to transport calls to the respective tandems and that tandem switching facilities provided by the respective tandem providers would need to be used to transit the call to a particular wireless carrier. In the cost analysis I will be presenting, I have estimated the transport and transiting costs based upon the rate elements and rates that the small companies understand SBC and Verizon would charge, based upon Illinois Consolidated's special access tariff rates, and based upon Odin's access rates for transport for the calls that would need to be delivered to their respective Centralia, Olney and Mattoon tandems.

Q. So the record is clear, is it your understanding that neither the FCC, nor this Commission, has to-date determined the responsibility for the payment of those types of costs and any associated intercarrier compensation for the transport of calls nor has a determination been made as to how those costs should be recovered?

436 A. That is correct. It is my understanding that neither the FCC, nor this Commission,
437 has to-date determined the responsibility for those costs or how they are to be
438 recovered.

439

440 Q. Does Odin believe that the company, and ultimately its end user customers,
441 should be responsible for those transport, transiting and related costs?

442 A. No. We believe those costs should not be the responsibility of Odin and/or its end
443 user customers. However, at this point in time and for the purpose of projecting
444 the estimated costs involved in the provision of wireline-to-wireless local number
445 portability, we have had no choice but to assume the worst case scenario in which
446 Odin would be responsible for the costs of delivering those calls to the wireless
447 carrier and ultimately recovering those costs from our end user customers. As I
448 stated earlier in my testimony, it is Odin's more basic position that we should not
449 be required to provide wireline-to-wireless number portability until such time as
450 determinations have been made as to how the transport and transiting costs are to
451 be recovered and mechanisms are in place that will allow Odin to recover these
452 costs.

453

454 Q. Has Odin attempted to estimate the costs that would be involved for Odin to
455 provide wireline-to-wireless local number portability, and in turn, the potential
456 amount that would have to be recovered from each of Odin's customers per
457 month to recover those costs?

458 A. Yes, we have. While certain of the costs are based upon information we have
459 received from vendors, we have had to estimate a number of the incremental costs
460 and make certain assumptions regarding the quantity of numbers that would be
461 ported and the traffic to those numbers from other Odin customers. As a result,
462 the analysis I am providing is what I would characterize as Odin's "best estimate"
463 of the costs involved and the potential amount that would have to be recovered
464 from Odin's customers.

465
466 Q. What model or methodology have you used in preparing the costs estimate?

467 A. The FCC has had rules in place for some time regarding local number portability
468 cost recovery for landline-to-landline number portability pursuant to which a
469 federal end user surcharge could be tariffed and filed for that cost recovery.
470 Those rules contain certain investment costs and certain ongoing expenses to be
471 recovered via an end user surcharge to be in place for a five year period of time.
472 Present value calculations are involved in establishing the surcharge. We have
473 used that type of methodology in order to estimate the costs over a five year
474 period of time and the amount of a potential customer surcharge. We have
475 included all of the incremental costs that Odin believes would be incurred.

476
477 Q. Does the FCC's methodology address the recovery of the transport and transiting
478 costs you previously discussed?

479 A. No, it does not. As I previously indicated, no determination has been made by the
480 FCC, nor this Commission, concerning the recovery of those costs. However, for

the reasons I previously stated, we have estimated the amount of those costs over a five year period of time and included them within the calculations, since under a worst case scenario, they would have to be recovered from Odin's end users.

While we have used the FCC methodology, the purpose was not to establish the amount that could be recovered under the FCC's Rules but rather the amount, which in some fashion whether it be through surcharges or increases in basic rates, would have to be recovered from Odin's end user customers.

Q. Has Odin used a particular model in making its costs estimates?

A. Yes, we have. Our model is based on cost support filed and approved by the National Exchange Carriers Association (NECA) in a local number portability filing, which they made with the FCC in NECA's Transmittal #956. The NECA model has been used by individual companies to file their federal surcharges, and as a result, we felt it was appropriate for use.

I would like to note that this is the same model that was used by Madison and the other four companies in the prior LNP suspension filings and reviewed by the Commission Staff.

Q. So that the record is clear, is Odin requesting this Commission to approve the cost estimates it is submitting as its incremental costs of providing wireline-to-wireless local number portability?

504 A. No, we are not. The estimates are being submitted to provide the Commission the
505 best estimates we have of the incremental costs Odin would incur and the
506 estimated amounts Odin would have to recover from its customers if Odin were
507 required to provide wireline-to-wireless local number portability at this time. The
508 information is also submitted in light of the statutory criteria contained in Section
509 251(f)(2) of the Federal Act pursuant to which Odin is seeking a further
510 suspension or modification of the wireline-to-wireless local number portability
511 requirements.

512

513 Q. For a similar reason, would you indicate for the record whether Odin is requesting
514 that the Commission approve any type of end user surcharge, or increased
515 customer rate, connected with the provision of wireline-to-wireless local number
516 portability or find that any such amount is appropriate to be recovered under the
517 federal surcharge.

518 A. No, we are not. The information is being presented for the reasons I previously
519 indicated, and most specifically, not to ask that the Commission approve some
520 type of end user rate increase and/or surcharge or find that a surcharge amount is
521 appropriate if tariffed at the federal level.

522

523 Q. For the record, please identify Attachment 1 to Odin Exhibit 1.

524 A. Attachment 1 is Odin's exhibit estimating the total costs to Odin of
525 providing wireline-to-wireless local number portability. Attachment 1 is five (5)
526 pages in length. The first page of the Attachment entitled "Odin Telephone

Exchange, Inc. Local Number Portability Data Summary” sets forth the total costs that Odin has projected as I previously described. As can be seen from looking at that page of the exhibit, there are initial local number portability start-up costs, both in the Investments and Expenses categories and then certain ongoing expenses over the five year period of time. After applying present value factors, the cost is \$202,584.

As shown at the bottom right-hand corner of that page of the Attachment, Odin would have to recover \$1.31 per month from each access line either by means of a surcharge or a rate increase to recover the costs as described. It is Odin’s position that the Commission should find that a further suspension or modification of any obligation Odin may have to provide wireline-to-wireless local number portability is necessary to avoid a significant adverse economic impact on Odin’s customers or to avoid imposing a requirement that is unduly economically burdensome on Odin and that the granting of such further suspension is consistent with the public interest, convenience and necessity.

The remaining pages of Attachment 1 contain schedules and information of a back-up or workpaper nature while those materials might not normally be submitted into the record or provided initially. In light of the time constraints of the proceeding, we have included those materials so they would be available to the Staff and the Administrative Law Judge at the earliest possible time.

550 Q. I am now going to ask you questions concerning each of the line items on page 1
551 of Attachment 1. What costs are connected with the line item "LNP Software"
552 and how were those costs estimated?

553 A. This is the loading or activation of the local number portability capability within
554 the four Odin switches, which I previously referred to. The cost of \$15,164 is
555 based upon a quote the Company received from Nortel. Their quote is \$4.00 per
556 line.

557

558 Q. What is the basis for the \$8,000 cost for switch translations?

559 A. Nortel has indicated that the cost of translations for the Odin switches would be
560 \$8,000 in total. That quoted number has been used. At this point in time, Odin
561 intends to rely upon Nortel personnel to perform those translations and the
562 associated testing and verification functions. If Odin subsequently determines
563 that additional personnel are needed to be involved in the testing and verification
564 process, we would have underestimated Odin's costs.

565

566 Q. Are the query and transport and transit expenses you have estimated and which
567 are included on the first page of Attachment 1 related to or driven by demand?

568 A. Yes, they are. As a result, we have had to make an assumption or estimate of the
569 number of customers who would potentially port to a wireless carrier and the
570 volume and duration of the calls from other Odin customers to those ported
571 numbers. As I indicated previously in my testimony, it is Odin's belief that
572 there would be little, if any, demand for wireline-to-wireless number portability

by our customers. We have discussed the potential demand with other companies and advisors and have reviewed the demand estimates made by Madison and the other small companies in the dockets that were previously heard. We have decided that the estimates used by Madison and the other small companies in the other dockets (which have already been reviewed by the Staff) are reasonable, and we are using the same estimates.

The estimate contained in the exhibit and which we are making for this proceeding is that 6% of Odin's access lines would port to a wireless carrier in the first year we implement wireline-to-wireless number portability and that 1% more would port in each of the second, third, fourth and fifth years so that by the end of the fifth year, 10% would have ported.

Odin is a cost company and records its minutes of use and messages. However, Odin recently purchased the Oblong and Martinsville exchanges from Illinois Consolidated. So, minutes of use and message data were not available for those two exchanges.

Therefore, I had to estimate local minutes of use and messages for Odin by using the weighted average minutes of use and messages for our cost company clients that had thus far filed for suspensions of the local number portability requirements with the Commission. The weighted average minutes of use was calculated on a per line basis for the cost companies. This figure was then multiplied by the

number of access lines that Odin serves. Similarly, the weighted average minutes of use per message was developed for the cost companies and included in the corresponding input cell for Odin.

Q. Taking into account your previous response, how was the amount of the query expense over the five years determined?

A. Based upon discussions we have had, it is our current understanding that Odin would put triggers into its switch that would result in only calls to ported numbers being required to be queried. The rate per query dip has been obtained from a vendor and the projected demand was developed as described above. Based upon our present understanding, the query expense is relatively minimal.

Q. Please describe the estimates included for transport and transit.

A. Differing from the query expense, the transport and transit costs are more significant. As I indicated earlier, we have used the rates and rate elements that we understand SBC, Verizon and Illinois Consolidated would charge and Odin's access rates for the transport and transiting of calls to the respective tandems for delivery to wireless carriers. Like the query costs, the transport and transit costs grow from year to year based upon the estimates of how many customers will have ported their numbers to wireless carriers in each of the first five years. The query and transport and transiting costs, as well as many of the other expenses, would continue on and could potentially grow beyond the five year time horizon included within the exhibit.

619

620 Q. If a higher number of customers port to wireless carriers than you have projected
621 in your estimates, what would be in the impact on the estimates you are
622 presenting?

623 A. If a higher number of customers port resulted in higher call volumes, we will have
624 underestimated both transport and transit costs, as well as the query costs.
625 Odin would also have fewer access lines over which to recover any costs, and
626 the costs per subscriber per month would be higher than that reflected on
627 Attachment 1.

628

629 Q. If on the other hand Odin's belief is correct that there is little or no demand for
630 wireline-to-wireless number portability, what would be the impact?

631 A. If that is correct, we would have overestimated variable costs, such as transport
632 and transit and query charges. However, the initial start-up investments and
633 expenses would remain as well as certain ongoing expenses. In Odin's view,
634 until there is a proven demand, those expenses and investments should not be
635 incurred and they would, in fact, in some ways be even more unfair and
636 burdensome on Odin's customers to make them pay for the costs for a service
637 (although the costs would be lower), which they do not desire.

638

639 Q. Please comment on the expense line labeled "regulatory/legal/admin/order
640 processing".

641 A. Based upon our discussions with counsel and the other small companies, we have
642 estimated an initial or start-up legal and regulatory costs in the amount of
643 \$20,000. The estimate includes estimated fees from consultants and attorneys to
644 negotiate service level agreements with wireless carriers, develop and file LNP
645 tariffs, file company information with NeuStar and in the BIRRDs/LERG
646 databases, evaluate query and SOA providers, implement regulatory-compliant
647 911 methods, and understand all regulatory requirements associated with
648 intermodal LNP. The 100 estimated regulatory/legal hours may be conservative
649 considering that Odin does not have employees that are devoted to regulatory
650 matters and that they outsource most regulatory work to consultants and attorneys.

651
652 With regard to ongoing administrative expenses, the estimates are based upon
653 information received from GVNW, who Odin would use for LNP administration
654 services. A \$2,000 annual fee must be paid to GVNW for those services together
655 with a per port fee charge of \$2.00. That portion of the annual expenses for years
656 1-5 reflect those charges being assessed against the numbers that are ported within
657 a particular year.

658
659 Q. Please explain the "Employee Education" expense, which you have included on
660 the Attachment.

661 A. Nortel is providing technical training with regard to local number portability.
662 Attachment 3 to my testimony is a copy of the course description that Nortel has
663 indicated are appropriate for technical training with regard to local number

portability. The price of those courses based upon Nortel's quote is \$8,965 per technical employee trained. Odin plans to have two technical employee receive this training.

In addition, non-technical employees would need to be trained. We have included training for nine employees at a cost of \$300 per employee before any implementation of wireline-to-wireless local number portability. We have also included an ongoing expense for training of \$300 per year in years 1-5.

Q. Please discuss the line item entitled "Technical Trouble", which I understand includes technical support to implement the local number portability process and would involve ongoing operational or technical issues related to the provision of local number portability.

A. This is an estimate based upon Odin's experience with similar issues and services and our discussions with other small company representatives concerning these types of costs. We have projected total technician time and estimated labor rates over the entire five-year period and then spread the costs, in part, between start-up costs with the remaining amount being incurred over each of the five years.

Q. Please provide the basis for the estimated costs related to "customer education".

A. If Odin were required to implement wireline-to-wireless number portability, it is the view of Odin's management that there would need to be at least two customer education mailing pieces prior to its implementation and that Odin would then

687 need to have two ongoing mailings for customer education purposes each year.
688 Based upon the costs of previous pre-prepared mail pieces and our discussions
689 with other companies, Odin is estimating that the costs of a mailing to each
690 customer is 75¢ per mailing, which once again would occur twice each year. In
691 looking at page 1 of Attachment 1, you can see that costs decline per year because
692 of our assumption that we would have fewer access lines as time goes by as a
693 result of certain customers porting their numbers to wireless carriers, as
694 previously discussed.

695
696 Q. Describe in detail the type of customer education Odin proposes to undertake.

697 A. Since Odin is seeking a suspension of any obligation it may have to provide
698 wireline-to-wireless local number portability, specific customer information
699 pieces have not, as yet, been developed. However, as indicated in my prior
700 answer, the Company intends to send out customer education mailing pieces prior
701 to any time it is to implement wireline-to-wireless local number portability and to
702 continue that education process with follow-up mailings that the Company
703 believes to be necessary. (Response to Staff Data Request 1.19)

704
705 Q. Describe the purpose and content of the customer education that Odin intends to
706 provide.

707 A. Once again, since the Company is seeking a suspension of any obligation it may
708 have to provide wireline-to-wireless number portability, the specific content of
709 any customer education pieces has not been developed at this time. The Company

710 would intend to get informational pieces perhaps developed by larger companies
711 and provided to their customers for use in developing appropriate mailing pieces.
712 The purpose of the customer education would be first and foremost to provide
713 information concerning what wireline-to-wireless number portability is and to
714 provide information to the customer concerning what steps they would need to
715 take if they desired to port their landline number to a wireless telephone. Once
716 again, Odin, as a small company, intends to rely upon information developed by
717 larger companies, trade associations, etc. in developing appropriate customer
718 education pieces should they become necessary. (Further Response to Staff Data
719 Request 1.19)

720

721 Q. Am I correct that present value calculations were performed as reflected on page
722 1 of Attachment 1?

723 A. Yes, that is correct.

724

725 Q. Does that complete your discussion of Attachment 1 and Odin's estimates of the
726 incremental costs involved to it and the potential amounts that would need to be
727 recovered from Odin's customers if required to implement wireline-to-wireless
728 number portability?

729 A. Yes, it does. I should emphasize that the cost estimates are based upon what is
730 known today and take into account the estimates and assumptions we have made.
731 Other companies may be able to include additional estimated costs, which I have

732 not included within the Odin exhibit, and to that extent, the estimated costs
733 contained in Attachment 1 may well be low.

734

735 Q. In regard to the relief that Odin is seeking in this proceeding, is Odin asking the
736 Commission to enter an Order in this docket permanently suspending any
737 obligation that Odin may have to provide wireline-to-wireless local number
738 portability?

739 A. No, Odin is not.

740

741 Q. Please describe the relief that Odin is requesting.

742 A. Odin is requesting a suspension of any obligation it may have to provide wireline-
743 to-wireless local number portability for a period of 2½ years or 30 months from
744 May 24, 2004 to November 24, 2006. That is the length of suspension that both
745 individual small companies and the Staff have recommended in the five
746 proceedings that were previously heard and which I have referenced in my
747 testimony. After reviewing the testimony and transcripts in those proceedings and
748 discussing the same with Odin's management and its advisors, Odin believes that
749 the recommendations made by both the companies and the Staff in those
750 proceedings are not only reasonable but are reflective of Odin's situation, as well.

751

752 Q. Does Odin have any technical issues that warrant consideration?

753 A. Yes. Because the Shobonier exchange does not have SS7 capability, and SS7
754 capability is required to deploy LNP, Odin could not deploy LNP in the

Shobonier exchange until it first obtains SS7 capability. Shobonier is connected to the SBC Vandalia exchange via N2, an old analog carrier technology that does not support SS7. SBC owns the entire toll route from Vandalia to Shobonier, including the N2 carrier in Odin's central office. In order for Odin to obtain SS7 capability, SBC would need to upgrade its facilities between the exchanges. SBC has verbally agreed to deploy fiber facilities to the meet point between the exchanges later this year. Odin would simultaneously deploy the remaining fiber facilities from the meet point to its central office. But SBC has not agreed to attach the appropriate electronics to the fiber facilities until early next year. Once the fiber and electronics are operational, Odin will have SS7 capability.

Q. Given the technical limitations that currently exist in the Shobonier exchange, do you request any additional or alternative relief?

A. Yes. If the 2 ½ year suspension previously requested is not granted, Odin requests that, at a minimum, the Commission grant a suspension of Odin's LNP obligations in the Shobonier exchange because of technical impediments until at least May 24, 2005 in order to allow enough time for Odin and SBC to upgrade their interoffice facilities to allow for SS7 and LNP capability in the Shobonier exchange.

Q. Does that conclude your direct testimony?

A. Yes, it does.

Odin Telephone Exchange, Inc.
LOCAL NUMBER PORTABILITY DATA SUMMARY

Odin Exhibit 1.0
Attachment 1

| | Initial LNP Start-Up Cost | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Total LNP Cost Projections |
|--|------------------------------|------------------|------------------|------------------|------------------|------------------|----------------------------------|
| INVESTMENTS | | | | | | | |
| LNP Software | \$ 15,164 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 15,164 |
| OSS | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Voice Announcements | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Switch Translations | \$ 8,000 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ 8,000 |
| LNP Hardware | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| LNP Transport Hardware | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| | | | | | | | |
| EXPENSES | | | | | | | |
| Query | \$ - | \$ 308 | \$ 359 | \$ 411 | \$ 462 | \$ 514 | \$ 2,054 |
| Transport and Transit | \$ - | \$ 15,721 | \$ 18,342 | \$ 20,962 | \$ 23,582 | \$ 26,202 | \$ 104,809 |
| Regulatory/Legal/Admin/Order Processing | \$ 20,000 | \$ 2,455 | \$ 2,076 | \$ 2,076 | \$ 2,076 | \$ 2,076 | \$ 30,758 |
| Employee Education | \$ 20,630 | \$ 300 | \$ 300 | \$ 300 | \$ 300 | \$ 300 | \$ 22,130 |
| Technical Trouble | \$ 10,000 | \$ 5,000 | \$ 5,000 | \$ 5,000 | \$ 5,000 | \$ 5,000 | \$ 35,000 |
| Customer Education | \$ 5,687 | \$ 5,345 | \$ 5,288 | \$ 5,232 | \$ 5,175 | \$ 5,118 | \$ 31,844 |
| | | | | | | | |
| | | | | | | | |
| Sub-Totals | \$ 79,481 | \$ 29,130 | \$ 31,365 | \$ 33,980 | \$ 36,595 | \$ 39,209 | \$ 249,760 |
| Present Value Factors | 100.0000% | 89.8876% | 80.7979% | 72.6273% | 65.2830% | 58.6813% | |
| Present Value Total Cost Projections | \$ 79,481 | \$ 26,184 | \$ 25,343 | \$ 24,679 | \$ 23,890 | \$ 23,009 | \$ 202,584 |
| | | | | | | | |
| Access Lines | | | | | | | 2,568 |
| Months | | | | | | | 60 |
| | | | | | | | |
| Annual Expense per subscriber per month | | | | | | | \$ 1.31 |

| | | | |
|----|---|-------------|------------|
| 1 | | | |
| 2 | Odin Telephone Exchane, Inc. | | |
| 3 | <u>I-CO Data</u> | | |
| 4 | PBX Lines | 0 | |
| 5 | ISDN-PRI Lines | 0 | |
| 6 | Other Access Lines | 3,791 | |
| 7 | Equipped Lines | 3,791 | |
| 8 | Local MOU- Tandem 1 - SBC | 4,911,466 | 16,521,178 |
| 9 | Local MOU- Tandem 2 - Verizon | 6,676,456 | 4358 |
| 10 | Local MOU- Tandem 3 - ICTC | 4,933,256 | 16,521,178 |
| 11 | Number of Employeees | 9 | |
| 12 | Number of End Offices Requiring Translations | 2 | |
| 13 | RIC | \$ 0.006086 | |
| 14 | Tandem Switched Transport | \$ 0.005245 | |
| 15 | | | |
| 16 | <u>Tandem 1 Transiting Rates - SBC</u> | | |
| 17 | Tandem Switching | \$ 0.004886 | |
| 18 | Tandem Transport | \$ 0.000189 | |
| 19 | Tandem Transport Facility | \$ 0.000093 | |
| 20 | | | |
| 21 | <u>Tandem 2 and 3 Transiting Rates</u> | | |
| 22 | Tandem 2 Transiting - Verizon | 0.0011662 | |
| 23 | Tandem 3 Transiting - ICTC | 0.0084930 | |
| 24 | | | |
| 25 | | | |
| 26 | <u>Assumptions</u> | | |
| 27 | Average Holding Time Per Local Call | 7.00 | |
| 28 | LNP Query Charge | \$ 0.003102 | |
| 29 | Present Value Factor, Year 1 | 0.89888 | |
| 30 | Present Value Factor, Year 2 | 0.80798 | |
| 31 | Present Value Factor, Year 3 | 0.72627 | |
| 32 | Present Value Factor, Year 4 | 0.65283 | |
| 33 | Present Value Factor, Year 5 | 0.58681 | |
| 34 | Wireless Penetration, Year 1 | 6% | |
| 35 | Wireless Penetration, Year 2 | 7% | |
| 36 | Wireless Penetration, Year 3 | 8% | |
| 37 | Wireless Penetration, Year 4 | 9% | |
| 38 | Wireless Penetration, Year 5 | 10% | |
| 39 | Regultatory/Legal Fee Per Hour | \$ 200 | |
| 40 | Regulatory/Legal Hours, Year Zero | 100 | |
| 41 | Customer Education, Cost Per Mailing | \$ 0.75 | |
| 42 | Customer Education, Number of Mailings Per Year | 2 | |
| 43 | Employee Education, Cost Per Employee | \$ 300.00 | |
| 44 | Employee Education, Number Of Employees Per Year, 1-5 | 1 | |
| 45 | Cost Per Translation Per Office | \$ 4,000 | |
| 46 | Technical Cost Per Hour | \$ 50.00 | |
| 47 | Technical Hours, Year Zero | 200 | |
| 48 | Technical Hours Per Year, 1-5 | 100 | |
| 49 | LNP Adminstration, Annual Fee | \$ 2,000 | |
| 50 | LNP Port Fee Per Ported Number | \$ 2.00 | |
| 51 | Software Cost Per Wired Line | \$ 4.00 | |
| 52 | Number of Employees Needing Technical Training | 2 | |
| 53 | Cost Per Technical Training Per Employee | 8,965 | |

LOCAL NUMBER PORTABILITY DATA
FOR DEVELOPMENT OF LNP END USER AND QUERY CHARGES

Odin Exhibit 1.0

Attachment 1

| | |
|--------------------------|-------------------------------|
| COMPANY NAME | Odin Telephone Exchange, Inc. |
| STUDY AREA NUMBER | 0 |

| AVERAGE MONTHLY LINES | | YEAR | | | | |
|--|--------------------|--------------|--------------|--------------|--------------|--------------|
| | 0 (Current) | 1 | 2 | 3 | 4 | 5 |
| 1. PBX | 0 | 0 | 0 | 0 | 0 | 0 |
| 2. ISDN-PRI | 0 | 0 | 0 | 0 | 0 | 0 |
| 3. Other (Sum of Residential, Single Line Business, Multiline Business, Centrex) | 3,791 | 3,564 | 3,526 | 3,488 | 3,450 | 3,412 |
| 3a TOTAL | 3,791 | 3,564 | 3,526 | 3,488 | 3,450 | 3,412 |
| 3b Present Value Access Line | 3,791 | 3,203 | 2,849 | 2,533 | 2,252 | 2,002 |

| INVESTMENTS | | YEAR | | | | |
|---|--------------------|-------------|------------|------------|------------|------------|
| | 0 (Current) | 1 | 2 | 3 | 4 | 5 |
| 4. Software Upgrades Total: (Please also itemize below, and provide descriptions in the right-most column) | \$23,164 | \$0 | \$0 | \$0 | \$0 | \$0 |
| 4a. LNP Software | \$15,164 | | | | | |
| 4b. OSS | \$0 | | | | | |
| 4c. Voice Announcements | \$0 | | | | | |
| 4d. Switch Translations | \$8,000 | | | | | |
| 5. Hardware & Other (Please list items below) | | | | | | |
| 5a. LNP Hardware | | | | | | |
| 5b. LNP Transport Hardware | | | | | | |
| 5c. | | | | | | |
| 5d. | | | | | | |
| TOTAL | \$23,164 | \$0 | \$0 | \$0 | \$0 | \$0 |

| EXPENSES (Maintenance etc.) | | YEAR | | | | |
|---|--------------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| | 0 (Current) | 1 | 2 | 3 | 4 | 5 |
| 6. Please list items below | | | | | | |
| 6a. Regulatory/Legal/Admin/Order Processing | \$20,000 | \$2,455 | \$2,076 | \$2,076 | \$2,076 | \$2,076 |
| 6b. Employee Education | \$20,630 | \$300 | \$300 | \$300 | \$300 | \$300 |
| 6c. Technical Trouble | \$10,000 | \$5,000 | \$5,000 | \$5,000 | \$5,000 | \$5,000 |
| 6d. Customer Education | \$ 5,687 | \$ 5,345 | \$ 5,288 | \$ 5,232 | \$ 5,175 | \$ 5,118 |
| TOTAL | \$56,317 | \$13,100 | \$12,664 | \$12,607 | \$12,551 | \$12,494 |

1 **Odin Telephone Exchange, Inc.** Odin Exhibit 1.0
Attachment 1

2 Transport Costs - Tandem 1

| Year | Transit & Transport Expense |
|-------|-----------------------------------|
| 1 | \$ 4,847 |
| 2 | \$ 5,655 |
| 3 | \$ 6,463 |
| 4 | \$ 7,271 |
| 5 | \$ 8,079 |
| Total | \$ 32,315 |

11 Transport Costs - Tandem 2 and 3

| Year | Transit & Transport Expense |
|-------|-----------------------------------|
| 1 | \$ 10,874 |
| 2 | \$ 12,686 |
| 3 | \$ 14,499 |
| 4 | \$ 16,311 |
| 5 | \$ 18,123 |
| Total | \$ 72,494 |

20 Query Dip Charges

| Year | Query Charge |
|-------|--------------|
| 1 | \$ 308 |
| 2 | \$ 359 |
| 3 | \$ 411 |
| 4 | \$ 462 |
| 5 | \$ 514 |
| Total | \$ 2,054 |

| | units | cost per | Total | Comments |
|--------------------|-------|----------|--------|--|
| INVESTMENTS | | | | |
| 4a. | 1 | 15,164 | 15,164 | Switch Vendor Quote |
| 4d. | 2 | 4,000 | 16,000 | Switch Vendor Quote + Same Cost For Additional Engineer |
| 4d. | 1 | - | - | Estimated Cost to Upgrade Billing System |
| EXPENSES | | | | |
| 6a. | 100 | 200 | 20,000 | Projected 100 hours of regulatory/legal at a composite average billing rate of \$200/hour. |
| | 5 | 2,000 | 10,000 | |
| | 227 | 2 | 455 | Annual Fee charged by GVNW for LNP administration is \$2,000 and per port fee charged by GVNW is \$2 |
| | 152 | 2 | 303 | |
| | | | 10,758 | |
| 6b. | 2 | 8,965 | 17,930 | Switch Vendor Training Costs Times Number of Technical Employees |
| | 9 | 300 | 2,700 | Estimated training cost for non-technical employees. |
| 6c. | 200 | 50 | 10,000 | Estimated Technical labor hours for trouble, and support of LNP |
| | 100 | 50 | 5,000 | |
| | | | | Based on previous pre-prepared mail pieces estimated the cost of \$0.75 per customer per mailing. We projected that we would run two notices per year. Totals changes in years 2-5 as access lines change. |
| 6d. | 3,791 | 1 | 5,687 | |



October 22, 2003

Odin Telephone Exchange, Inc.
908 W. Frontview
Dodge City, KS, 67801-0199

Verizon Wireless
Interconnection/Numbering/Mandates
2785 Mitchell Drive MS 7-1
Walnut Creek, CA 94598

Attn: Tom Moore,

Consistent with the rules of the Federal Communications Commission ("FCC"), on November 24, 2003, Verizon Wireless will begin competitive porting by offering customers local number portability ("LNP").¹ The FCC sought to simplify the task of identifying the switches in each MSA in which number portability is deployed to facilitate competitive entry.² Thus, the FCC's rules require local exchange carriers to make available, upon request by any interested party, a list of their switches for which provisioning of number portability has been requested (and therefore provided) and a list of their switches for which provisioning of number portability has not been requested.³

Verizon Wireless has reviewed our commonly licensed areas and has found the following switches and NPA-NXXs not LNP capable. Upon receipt and verification of the attached Bonafide Request, Verizon Wireless requests that all of these commonly licensed areas, NPA-NXX and switch CLLIs are provisioned for LNP service. The timeframes for conversion to LNP of any additional switches are governed by the FCC's rules and range from 30 days to 180 days, depending upon the status of the switches.

To facilitate this request, please review and list any additional switches and NPA-NXXs serving those rate centers listed on the attached form that are not LNP capable and by what date these will be LNP capable. In addition, for those switches that are not LNP capable, please indicate the status of the switch using the categories developed by the FCC in its rules (*i.e.*, equipped remote, hardware capable, capable switches requiring hardware, and non-capable).⁴ Please review and correct, if necessary the carrier name listed on the Bonafide Request. We request that you acknowledge receipt of this Bonafied Request and arrange to complete and return the attached form to the undersigned contact for Verizon Wireless within 10 days. Please call the undersigned with any questions or concerns.

A handwritten signature in cursive script, appearing to read "Linda Godfrey".

Linda Godfrey
Verizon Wireless
Interconnection, Numbering and Mandates
925-279-6570

Enclosures

¹ See 47 C.F.R. § 52.31.

² Local Number Portability, *First Memorandum Opinion and order on Reconsideration*, 12 FCC Rcd. 7236, ¶¶59-66 (1997).

³ *Id.* at ¶64; 47 C.F.R. § 52.23(b)(2)(iii).

⁴ 47 C.F.R. § 52.23 (b)(2)(iv)(A-D).

Network Operations Support



Verizon Wireless
Interconnection/Numbering/Mandates
2785 Mitchell Drive MS 7-1
Walnut Creek, CA 94598

October 22, 2003

Odin Telephone Exchange, Inc.
908 W. Frontview
Dodge City, KS 67801-0199

Re: Wireline-Wireless Local Number Portability Agreement

Dear Tom Moore:

Verizon Wireless would like to establish an Intercarrier Communications Process (ICP) for porting of numbers between Verizon Wireless and Odin Telephone Exchange, Inc.. We need to reach agreement quickly given the pending FCC deadline.

Attached is a proposed service level agreement which we believe will facilitate quick, reliable, and seamless porting for our respective customers.

Please let me know your availability, so that we can set a time for a meeting. Please direct your response to our single point of contact, Sharon Cañas, who can be reached at 925-279-6122 or Sharon.Canas@VerizonWireless.com. I look forward to working with you to develop an efficient and effective intercarrier porting process between Verizon Wireless and Odin Telephone Exchange, Inc..

Thank you for your immediate attention to our request.

Sincerely,

for 
Bonnie R. Petti
Executive Director
Network Operations Headquarters Staff

BP:sc

Enclosure

AGREEMENT
WIRELESS-WIRELINE NUMBER PORTABILITY

by and between

Verizon Wireless

and

<<Wireline Carrier Name>>

THIS WIRELESS-WIRELINE NUMBER PORTABILITY SERVICE AGREEMENT ("Agreement") by and between Cellco Partnership d/b/a Verizon Wireless (a Delaware general partnership) and the Verizon Wireless Entities (collectively "Verizon Wireless"), each having an office and principal place of business at 180 Washington Valley Road, Bedminster, New Jersey 07921, and **[Wireline Carrier]**, on behalf of itself and its Affiliates (collectively "Carrier"), with offices located at **[Office Location]**. Verizon Wireless and Carrier may be collectively referred to as the "Parties" and individually as a "Party."

WHEREAS, the above named Parties wish to enter into an Agreement with each other and to be in compliance with the applicable rules and regulations of the Federal Communications Commission ("FCC Rules and Regulations").

WHEREAS, the Parties wish to enter into an Agreement to facilitate the ability of Customers to retain existing telephone numbers without impairment of quality, reliability, or convenience when switching from one of the Parties to this Agreement to the other Party to this Agreement through Local Number Portability.

WHEREAS, the Parties wish to enter into an Agreement to establish practices and procedures to ensure that Customer requests to port numbers are achieved efficiently, with minimal delays, except as required to validate a port request.

THEREFORE, the Parties wish to enter into this Agreement on the following terms and conditions:

1. TERM

This Agreement shall become effective in accordance with Section 34 ("Effective Date") and, except as otherwise provided in this Agreement, shall continue in full force and effect until either Party terminates the Agreement by providing notice of termination in writing to the other Party at least thirty (30) days in advance of such termination pursuant to the Notice provisions set forth in Section 18 of this Agreement. Upon termination, the Parties shall continue to provide Local Number Portability as may be required by Applicable Law.

2. CIRCUMSTANCES OF DEFAULT

A Party shall be in default under this Agreement if such Party:

- 2.1 Becomes insolvent, liquidates, is adjudicated as bankrupt, makes an assignment for the benefit of creditors, invokes any provision of law for the relief of debtors, or initiates any proceeding seeking protection from its creditors; and/or

- 2.2 Violates any applicable laws, statutes, or other legal requirements with respect to this Agreement; and/or
- 2.3 Fails to perform any material term, condition, or covenant of this Agreement and such Party fails to cure such nonperformance within thirty (30) calendar days of receipt of written notice of such default from the non-defaulting Party ("Cure Period"). Upon expiration of said Cure Period, the non-defaulting Party shall have the right to seek applicable remedies under this Agreement. When a default cannot be reasonably cured within the Cure Period, the time for cure may be extended by agreement of the Parties for such period of time as may be reasonably necessary to complete such cure, provided the defaulting Party shall have proceeded promptly to cure such default and shall continue to prosecute such curing with due diligence.
- 2.4 Notices hereunder shall be given to the Notice address set forth in Section 18.

3. REMEDIES AND TERMINATION

- 3.1 In the event of default under this Agreement (and with respect to a default under Section 2.3, the Cure Period stated therein), the non-defaulting Party shall have the right, at its option, to suspend performance under this Agreement or to terminate this Agreement without further liability upon providing written notice of such termination to the defaulting party pursuant to the Notice provisions set forth in Section 18.
- 3.2 This Agreement may be affected by changes, modifications, orders, and rulings of regulatory bodies, including the FCC, to the extent competent jurisdiction otherwise exists. Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects the notifying Party's ability to perform its obligations under this Agreement. In the event a material modification is made to the obligations of a Party set forth in this Agreement, which materially affects the obligations of a Party hereunder, then either Party may terminate this Agreement pursuant to Section 1 of this Agreement. If neither Party exercises such a right of termination, and any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in applicable law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.
- 3.3 The rights set forth in Sections 2 and 3 of this Agreement are in addition to, and not in limitation of, any other right or remedy that a non-defaulting party may have at law or in equity.
- 3.4 Notices hereunder shall conform to the Notice provisions set forth in Section 18.

4. DEFINITIONS

Unless the context clearly indicates otherwise, when a term listed in these Definitions is used in the Agreement, the term shall have the meaning stated in these Definitions. A defined term intended to convey the meaning stated in these Definitions is capitalized

when used. Other terms that are capitalized, and not defined in these Definitions or elsewhere in the Agreement, shall have the meaning stated in the Act.

- 4.1 Act: The Communications Act of 1934 (47 U.S.C. 151 et. seq.), as amended.
- 4.2 Affiliate: Shall have the meaning set forth in the Act.
- 4.3 Agreement: This Agreement including all appendices attached hereto, orders by a Party that have been accepted by the other Party, future amendments, modifications and supplements made in accordance herewith.
- 4.4 Applicable Law: All effective laws, government regulations and government orders, applicable to each Party's performance of its obligations under this Agreement.
- 4.5 Assigned Telephone Number: A telephone number that is assigned to a Customer that can originate and terminate telephone calls through the Public Switched Telephone Network. An Assigned Telephone Number may be a suspended telephone number unless that telephone number was suspended for fraud but, for avoidance of doubt, will not include a telephone number that has been disconnected.
- 4.6 Commercial Mobile Radio Service ("CMRS"): Shall be as defined by the FCC.
- 4.7 Customer Proprietary Network Information ("CPNI"): Shall have the meaning set forth in Section 222 of the Act, 47 U.S.C. Section 222.
- 4.8 Customer: An end user and subscriber to the services provided by either of the Parties.
- 4.9 Customer Information: CPNI of a Customer and any other non-public, individually identifiable information about a Customer or, if applicable, the purchase by a Customer of the services or products of a Party.
- 4.10 Customer Service Records ("CSR"): The records that contain the identity, service address, rate plan or plans, and other information on the Customer.
- 4.11 Electronic Data Interface ("EDI"): A data interface for exchange of information between providers.
- 4.12 End Office: A switching entity used in performing, originating and terminating functions for calls to or from Customers. As used in this Agreement, the term End Office shall be used in reference to End Office Switches used by Carrier and other wireline carriers.
- 4.13 Intercarrier Communications Process ("ICP"): The communication process between the OSP and the NSP, which validates the Customer information and initiates and completes the port request. The ICP includes the exchange of the LSR/LR.
- 4.14 Local Number Portability ("LNP"): Shall have the meaning set forth in the Act.
- 4.15 Local Service Request ("LSR"): Forms containing information about a Customer who desires to port a telephone number to the NSP. A sample LSR and

descriptions of the fields therein can be found in the Local Service Ordering Guidelines ("LSOG").

- 4.16 Location Routing Number ("LRN"): Ten-digit number assigned to a switch or point of interconnection used for routing calls.
- 4.17 Metropolitan Statistical Areas ("MSA"): An MSA denotes a large urban population market as designated by the U.S. government.
- 4.18 Mobile Switching Center ("MSC"): A CMRS carrier's switching entity used to perform originating, transit and terminating functions for calls to and from end users, also referred to as Mobile Telecommunications Switching Office or "MTSO."
- 4.19 New Service Provider ("NSP"): The new provider that will provide service to the Customer and to whom the Customer ports its Assigned Telephone Number.
- 4.20 Number Portability Administration Center ("NPAC"): A neutral third party center that processes porting information from and disseminates that information to telecommunication carriers. The NPAC processes the NSP subscriber port request and downloads the LRN associated with the subscriber ported telephone number to local number portability databases.
- 4.21 Old Service Provider ("OSP"): The provider providing service to the Customer at the time the Customer requests porting of the Assigned Telephone Number.
- 4.22 Verizon Wireless Entities: Any FCC-licensed entity doing business as Verizon Wireless and/or directly or indirectly controlled by Cellco Partnership.

5. INFORMATION

The Parties acknowledge that Customer Information may be exchanged between the Parties and may be subject to legal restrictions on its use or disclosure, including without limitation laws relating to CPNI. The Parties may only obtain and use such restricted Customer Information in accordance with applicable laws and the restrictions contained in this Agreement. Prior to initiating a port request with the OSP, the NSP shall obtain consent from the Customer that permits the OSP to release to and/or to confirm with the NSP the information about the Customer that was sought by the NSP in the port request process. The NSP shall indemnify, defend, and hold harmless the OSP from and against any liabilities, claims, or demands, including costs, and expenses (including reasonable attorneys' fees) arising from or relating to any failure on the part of the NSP to obtain from the Customer consent for the OSP to release/confirm information about the Customer that was or is sought by the NSP in the port request process.

6. NUMBER PORTABILITY

6.1 Scope

The Parties shall provide LNP on a reciprocal basis pursuant to this Agreement in accordance with FCC Rules and Regulations as may be prescribed from time to time. "Delay" or "denial" of ports between Parties shall only occur in the event a Party is unable to complete the validation of those validation elements expressly set forth in Appendix A.

6.2 Procedures for Providing LNP

The Parties will follow the porting intervals applicable to wireline-wireline porting more specifically described in the North American Numbering Council's Local Number Portability Administration Selection Working Group, dated April 25, 1997, Appendix E, Section 7.1, Figure 1 until such time as the FCC adopts an LNP provisioning process flow and porting intervals for Inter-Service Provider LNP applicable between wireline and wireless carriers, at which time the Parties will follow LNP provisioning process flow and porting intervals established by the FCC. In addition, the Parties agree to follow the LNP ordering procedures established at the OBF for porting of Assigned Telephone Numbers.

- 6.2.1 For purposes of this Section 6, "Party A" refers to a Party whose Customer elects to become a Customer of the other Party ("Party B") and to utilize the original telephone number(s) corresponding to the service(s) it previously received from Party A, in conjunction with the service(s) it will now receive from Party B. Upon Party B receiving authorization from the Customer in accordance with Applicable Law and sending an LNP order to Party A, Parties A and B will work together to port the Customer's telephone number(s) from Party A's network to Party B's network.
- 6.2.2 When a telephone number is ported out of the Carrier network, Carrier will remove all line-based features and calling card(s) associated with the ported number(s) from its Line Information Database ("LIDB"). Reactivation of the line-based calling card in another LIDB, if applicable, is the responsibility of Verizon Wireless or the Customer.
- 6.2.3 When a Customer's number is ported between the Parties, Carrier will follow the 911 Guidelines recommended by the National Emergency Number Association ("NENA") with regard to emergency services databases.
- 6.2.4 When Party A ports telephone numbers of its Customer to Party B and the Customer has previously secured a reservation of line numbers from Party A for possible activation at a future point, these reserved but inactive numbers may be ported along with the active numbers to be ported provided the numbers have been reserved for the Customer. Party B may request that Party A port all reserved numbers assigned to the Customer or that Party A port only those numbers listed by Party B. As long as Party B maintains reserved but inactive numbers ported for the Customer, Party A shall not reassign those numbers. Party B shall not reassign the reserved numbers to another Customer.
- 6.2.5 NXX codes shall be portable in accordance with FCC Rules and Regulations except those permitted to be designated non-portable by the same FCC Rules and Regulations. The Parties, moreover, shall ensure that all switches, whether currently owned or hereafter acquired, are upgraded to facilitate LNP to the extent required by FCC Rules and Regulations.
- 6.2.6 Numbers can be ported to and from carriers whose licensed areas overlap and where the receiving carrier has the ability to provide service, as applicable. Porting numbers under these circumstances does not require modification and/or changes to current transport agreements.

6.3 LNP Ordering Procedures

6.3.1 Numbers to be ported from Carrier to Verizon Wireless

6.3.1.1 Orders for LNP shall be submitted by VZW to Carrier using an LSR either via web GUI, FAX or EDI. Verizon Wireless shall submit LSRs to port numbers only on behalf of itself and entities for which it has authority to act.

6.3.1.2 Instructions for submitting an LSR to Carrier are available via **[TBD – identify where instructions are found]**.

6.3.2 Numbers to be ported from Verizon Wireless to Carrier

6.3.2.1 Orders for LNP shall be submitted by Carrier to Verizon Wireless utilizing validation information as required by Verizon Wireless and as applied to all other wireline carriers.

6.3.2.2 Instructions for submitting a validation request to Verizon Wireless will be provided via the Verizon Wireless process agreed to by the Parties.

6.4 Procedures for Providing LNP Through Full NXX Code Migration

When a Party has activated an entire NXX code for a single Customer and such Customer chooses to receive service from the other Party, the Parties shall follow the procedures set forth in the Industry Number Committee ("INC") Guideline 95-0407-0008 Central Office Code (NXX) Assignment Guidelines Section 7.

6.5 Procedures for Providing LNP Using Type 1 Numbers

Upon request of Verizon Wireless, the Parties will work together to migrate telephone numbers assigned to Type 1 trunks to the Verizon Wireless switch.

6.6 Procedures for Requesting LNP Capability

Either Party may submit a written request that the other Party upgrade any of its End Offices/MSCs to become LNP capable.

6.6.1 If either Party desires to have LNP capability deployed in an End Office/MSOC of the other Party that is not currently capable, the requesting Party shall issue an LNP request to the other Party. The Party receiving such request will respond to the requesting Party within ten (10) calendar days of receipt of the request with a date for which LNP will be available in the requested End Office/MSOC. The Party receiving the request shall proceed to provide for LNP in compliance with the procedures and timelines set forth in FCC Rules and Regulations.

6.6.2 The Parties will each be responsible for updating the LERG to reflect the LNP capabilities of their respective End Offices/MSOCs.

6.7 The Parties acknowledge and agree that telecommunications system interruptions or service outages may occur which may delay the processing of port requests. The Parties shall use best reasonable efforts to avoid such interruptions or outages and with respect to scheduled outages or maintenance

activities shall work with each other to schedule them so as to minimize disruptions to subscribers. Scheduled interruptions/maintenance should adhere to standard industry agreed upon maintenance windows for the NPAC.

7. TROUBLE, MAINTENANCE AND REPAIR

7.1 Both Parties agree to work expeditiously to resolve any issues associated with porting a Customer between the two Parties. Before either Party reports a trouble condition, that Party must first use commercially reasonable efforts to isolate the trouble to the other Party's actions or facilities. In order to facilitate trouble reporting and resolution, the Parties shall provide the trouble reporting contact information, per Section 22 of this Agreement. It is the responsibility of each Party to maintain the accuracy of its contact information and to notify the other Party of changes and modifications.

7.2 As part of the commitments set forth in Section 7.1 of this Agreement, each Party shall monitor and perform effective maintenance through testing and the performance of proactive maintenance activities such as routine testing, development of and adherence to appropriate network trouble isolation processes and periodic review of operational elements for translations, routing and network faults.

8. DIRECTORY LISTINGS

This Agreement does not govern or authorize the inclusion of listings in directories that may be published by a Party. Verizon Wireless shall not indicate on an LSR to be submitted to Carrier that it seeks for a ported number to be listed in a Carrier directory. Any listings shall be subject to separate agreement.

9. FRAUD

The Parties agree to cooperate in good faith with each other to investigate, minimize, and take corrective action in cases of fraud related to number portability. Each Party assumes responsibility for all fraud related to number portability associated with its Customers and accounts. Neither Party shall bear responsibility for, and shall have no obligation to investigate or make adjustments to, the accounts of the other Party in cases of fraud by the other Party's Customers or other third parties.

10. COSTS

The Parties to this Agreement will be responsible for their own costs incurred in implementing this Agreement.

11. USE OF TRADEMARKS

The Parties agree that they will not use the name, service marks or trademarks of the other Party or any of its affiliated companies in any manner whatsoever without such Party's specific written consent, which consent the other Party may grant or withhold in its sole discretion. Neither Party is licensed hereunder to conduct business under any logo, trademark, service or trade name (or any derivative thereof) of the other Party. Neither Party shall issue any press release or other publicity concerning this Agreement without the prior written consent of the other Party, which consent the other Party may grant or withhold in its sole discretion. Neither Party may imply any direct or indirect affiliation with or sponsorship or endorsement of it or its services or products by the other Party. Any violation of this Section 11 shall be considered a material breach of this Agreement.

12. COMPLIANCE WITH LAWS

The Parties shall comply with all federal, state and local laws applicable to their performance hereunder. Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.

13. FORCE MAJEURE

Neither Party shall be responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay or failure results from causes beyond its reasonable control ("Conditions"), whether or not foreseeable by such Party. Such Conditions include, but are not limited to, acts of God, wars, revolution, civil commotion, acts of public enemy, embargo, acts of government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing or boycotts. If any such Condition occurs, the Party delayed or unable to perform ("Delayed Party"), upon giving prompt notice to the other Party, shall be excused from such performance on a day-to-day basis during the continuance of such Condition (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis during the same period); provided, however, that the Party so affected shall use commercially reasonable efforts to avoid or remove such Condition and both Parties shall proceed immediately with the performance of their obligations under this Agreement whenever such causes are removed or cease. Nothing in this Agreement shall require the non-performing Party to settle any labor dispute except as the non-performing Party, in its sole discretion, determines appropriate.

14. ASSIGNMENT

This Agreement or any right or interest under this Agreement may not be assigned or transferred nor may any obligation under this Agreement be delegated without the prior written consent of the other Party, which consent may not be unreasonably withheld. Any attempted assignment or delegation in violation of this Section 14 shall be void and ineffective and constitute default of this Agreement.

15. BINDING EFFECT

This Agreement shall inure to the benefit of, and shall be binding upon the Parties hereto and their respective successors and permitted assigns.

16. INDEMNIFICATION

16.1 Each Party ("Indemnifying Party") shall indemnify, defend, and hold harmless the other Party ("Indemnified Party"), the Indemnified Party's Affiliates, (for purposes of this Section 16, Affiliates shall include Verizon Wireless Entities) and the directors, officers and employees of the Indemnified Party and the Indemnified Party's Affiliates, from and against any and all liabilities, claims, demands, suits, actions, settlements, judgments, fines, penalties, injuries, damages, or losses including costs (including court costs) and expenses (including reasonable attorneys' fees) ("Claims") that arise out of bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person to the extent such injury, death, damage, destruction or loss, was proximately caused by the grossly negligent or intentionally wrongful acts or omissions of the Indemnifying Party, the Indemnifying Party's Affiliates, or the directors, officers, employees, agents, or contractors (excluding the Indemnified Party) of the Indemnifying Party or the Indemnifying Party's Affiliates, in relation

to a port request under this Agreement, including a Claim where there is (a) a claim, demand, suit or action by a person who is not a Party, (b) a settlement with, judgment by, or liability to, a person who is not a Party, or (c) a fine or penalty imposed by a person who is not a Party (collectively referred to as a "Third Party Claim").

16.2 A Party seeking to be indemnified hereunder shall follow, and the Indemnifying Party's obligations under Section 16.1 shall be conditioned on following, the Indemnification Process set forth in this Section 16.2.

16.2.1 The Indemnified Party: (a) shall provide the Indemnifying Party with prompt, written notice of any Claim after becoming aware thereof (including a statement of facts known to the Indemnified Party related to the Claim and an estimate of the amount thereof); (b) prior to taking any material action with respect to a Third Party Claim, shall consult with the Indemnifying Party as to the procedure to be followed in defending, settling, or compromising the Claim; (c) shall not consent to any settlement or compromise of a Third Party Claim without the written consent of the Indemnifying Party; (d) shall permit the Indemnifying Party to assume the defense of a Third Party Claim (including, except as provided below, the compromise or settlement thereof) at the Indemnifying Party's own cost and expense, provided, however, that the Indemnified Party shall have the right to approve the Indemnifying Party's choice of legal counsel.

16.2.2 If the Indemnified Party fails to comply with Section 16.2.1 with respect to a Claim, to the extent such failure shall have a material adverse effect upon the Indemnifying Party, the Indemnifying Party shall be relieved of its obligation to indemnify, defend and hold harmless the Indemnified Party with respect to such Claim under this Agreement.

16.2.3 Subject to 16.2.4 and 16.2.5, below, the Indemnifying Party shall have the authority to defend and settle any Third Party Claim.

16.2.4 With respect to any Third Party Claim, the Indemnified Party shall be entitled to participate with the Indemnifying Party in the defense of the Claim if the Claim requests equitable relief or other relief that could affect the rights of the Indemnified Party. In so participating, the Indemnified Party shall be entitled to employ separate counsel for the defense at the Indemnified Party's expense. The Indemnified Party shall also be entitled to participate, at its own expense, in the defense of any Claim, as to any portion of the Claim as to which it is not entitled to be indemnified, defended and held harmless by the Indemnifying Party.

16.2.5 In no event shall the Indemnifying Party settle a Third Party Claim or consent to any judgment with regard to a Third Party Claim without the prior written consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed. In the event the settlement or judgment requires a contribution from or affects the rights of an Indemnified Party, the Indemnified Party shall have the right to refuse such settlement or judgment with respect to itself and, at its own cost and expense, take over the defense against the Third Party Claim, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify or hold harmless the Indemnified Party against, the Third Party Claim for any amount in excess of such refused settlement or judgment.

16.2.6 The Indemnified Party shall, in all cases, assert any and all provisions in applicable Tariffs and Customer contracts that limit liability to third persons as a bar to, or limitation on, any recovery by a third-person claimant.

16.2.7 The Indemnifying Party and the Indemnified Party shall offer each other all reasonable cooperation and assistance in the defense of any Third Party Claim.

16.3 Each Party agrees that it will not impede or bring any action against the other Party, the other Party's Affiliates, or any of the directors, officers or employees of the other Party or the other Party's Affiliates, based on any claim by any person for personal injury or death that occurs in the course or scope of employment of such person by the other Party or the other Party's Affiliate and that arises out of performance of this Agreement.

16.4 Each Party's obligations under this Section 16 shall survive expiration, cancellation or termination of this Agreement.

17. RELATIONSHIP OF THE PARTIES

17.1 Neither Party undertakes by this Agreement or otherwise to perform or discharge any liability or obligation of the other Party, whether regulatory or contractual, or to assume any responsibility whatsoever for the conduct of the business or operations of the other Party. The relationship of the Parties under this Agreement shall be that of independent contractors and is a non-exclusive relationship. Nothing contained in this Agreement is intended to give rise to an employment relationship, partnership or joint venture between the Parties or to impose upon the Parties any of the duties or responsibilities of employers, partners or joint venturers.

17.2 Except for provisions herein expressly authorizing a Party to act for another Party, nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party in writing, which permission may be granted or withheld by the other Party in its sole discretion.

17.3 Each Party shall have sole authority and responsibility to hire, fire, compensate, supervise, and otherwise control its employees, agents and contractors. Each Party shall be solely responsible for payment of any Social Security or other taxes that it is required by Applicable Law to pay in conjunction with its employees, agents and contractors, and for withholding and remitting to the applicable taxing authorities any taxes that it is required by Applicable Law to collect from its employees.

17.4 A Party may use a contractor of the Party (including, but not limited to, an Affiliate of the Party) to perform the Party's obligations under this Agreement, provided that a Party's use of a contractor shall not release the Party from any duty or liability to fulfill the Party's obligations under this Agreement.

18. NOTICES